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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/636,123	08/10/2000	Wolfgang Biesel	2565/76	6322

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NEW YORK, NY 10004

EXAMINER

MACHUGA, JOSEPH S

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 09/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/636,123

Applicant(s)

BIESEL, WOLFGANG

Examiner

Joseph S. Machuga

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 26 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1,3-5 and 7-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1, 305, 7-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 3-5, 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papillon et al in view of Gsell et al and Biesel et al.

2. Papillon et al discloses a vacuum driven blood-processing system. It includes a tube 10 for collecting blood from the surgical site, a filter 42, a centrifuge 44+ and means to return the blood to the patient 50, 51+. It also includes a line 14 to supply an anticoagulant upstream of the filter. Not disclosed by this reference is a filter located on the blood supply line of the tubing system in a continuous flow system (autologous autotransfusion set.)

3. Gsell et al discloses a blood filter having a blood inlet 11, blood outlet 42, collecting tank 13+ and filter assemble 36+ for filtering out leukocytes and other deleterious matter. The filter is design to have a high capacity that makes it useful in an extracorporeal circuits and the like.

4. Biesel et al discloses an autologous blood centrifuge. The device is specially designed for continuous processing. This feature eliminates the need to remove or drain

the centrifuge bowl as with the prior art devices. It also has the advantage of operating in the presents of a small or limited amount of collected blood such as that would be seen with infants.

5. It would have been obvious to one of ordinary skill in the art to provide the Papillon et al blood processing system with a high capacity filter as taught by Gsell et al in order to increase the amount of blood processed. It would have further been obvious to provide the Papillon et al system with a continuously operating centrifuge as taught by Biesel et al to eliminate the need to remove or drain the centrifuge bowl and to provide a system that is also capable of operating with small amounts of blood as would be seen with infants.

### ***Response to Arguments***

Applicant's arguments have been carefully considered but are not deemed persuasive. The limitation that the filter is arranged in the blood supply line is considered taught by the prior. As illustrated in Figure 3 of Gsell et al, the location of the filter is arranged in the blood supply line. This location is also necessary given the design of the filter assembly itself, note the inlet and outlets (11,12.) Applicant also argues that there is no teaching for using a centrifuge like that taught by Biesel et al. This is also not deemed persuasive. The Biesel et al (5607830) reference (column 2 lines 15-23 and lines 64-67) teaches that there exists a problem of processing small quantities of blood as is seen in pediatric patients and further discloses that this device is useful for that purpose.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph S. Machuga whose telephone number is 703-305-6184. The examiner can normally be reached on Monday-Friday; 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D Sykes can be reached on 703-308-5181. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

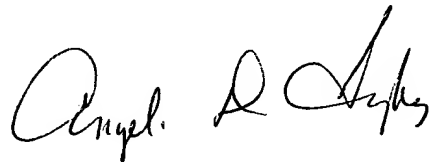
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

  
Joseph S. Machuga  
Examiner  
Art Unit 3762

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ANGELA D. SYKES  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700